

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
Lynchburg Division

JERRY L. FALWELL, JR.,)	
)	
<i>Plaintiff,</i>)	
)	
v.)	Civil Action No. 6:23cv00011
)	
LIBERTY UNIVERSITY, INC., <i>et al.</i> ,)	
)	
<i>Defendants.</i>)	
)	
LIBERTY UNIVERSITY, INC.,)	
)	
<i>Counterclaim Plaintiff,</i>)	
)	
v.)	
)	
JERRY L. FALWELL, JR.,)	
)	
<i>Counterclaim Defendant,</i>)	
)	

**JERRY L. FALWELL, JR.’S AGREED MOTION TO VOLUNTARILY
DISMISS COUNT II OF HIS COMPLAINT PURSUANT TO
FEDERAL RULE OF CIVIL PROCEDURE 41(a)(2)**

Plaintiff and Counterclaim Defendant, Jerry L. Falwell, Jr. (“**Mr. Falwell**”), by counsel, moves for the voluntary dismissal of Count II of his Complaint (“**Motion**”) against Defendant and Counterclaim Plaintiff Liberty University, Inc. (“**Liberty**”) and against Defendant the Executive Committee of the Board of Trustees for Liberty University, Inc. (“**Executive Committee**”).

In support of his Motion, Mr. Falwell states as follows:

1. On March 3, 2023, Mr. Falwell filed his two-count Complaint in this action against Liberty and the Executive Committee, alleging that Liberty and the Executive Committee injured Mr. Falwell in denying him benefits under his university-sponsored Supplemental Employee

Retirement Plan (“**SERP**”). In Count I, Mr. Falwell asserted a claim under the Employee Retirement Income Security Act (“**ERISA**”) for benefits wrongly denied. (Complaint., ECF 1). In Count II, Mr. Falwell asserted a claim, in the alternative, for breach of contract. *Id.*

2. On April 4, 2023, Liberty filed its Motion to Stay or Dismiss, Motion to Dismiss, and Motion for Partial Summary Judgment (“**Motion to Dismiss**”). In the Motion to Dismiss, Liberty moved the Court to dismiss Count II, arguing that it was “based on and relates to an employee welfare benefit plan governed by [ERISA]. As such ERISA preempts this claim, and Plaintiff’s state law claim must be dismissed.” (Motion to Dismiss, ECF 8, at 1).

3. On April 18, 2023, Mr. Falwell filed his Memorandum in Opposition to Liberty’s Motion to Dismiss (“**Opposition**”). In his Opposition, Mr. Falwell agreed to dismiss Count II voluntarily, noting that Liberty did not dispute the applicability of ERISA to the SERP. (Opposition, ECF 11, at 1).

4. In the Court’s Memorandum Opinion and Order (“**Order**”) following the hearing on Liberty’s Motion to Dismiss, the Court noted in a footnote that Mr. Falwell had agreed to dismiss Count II of the Complaint. (Order, ECF 25 at 5, n.5).

5. While Mr. Falwell effectively abandoned Count II of the Complaint, he did not formally dismiss the count.

6. In a hearing on February 1, 2023, on Mr. Falwell’s motion to dismiss Liberty’s counterclaims, the Court requested that Mr. Falwell file a motion and submit an order for the voluntary dismissal of Count II pursuant to Rule 41 of the Federal Rules of Civil Procedure (“**Rule 41**”).

7. Because Liberty has filed its Answer, Mr. Falwell may voluntarily dismiss Count II upon entry of an order of this Court. F.R.C.P. 41(a)(2). A proposed order is attached hereto as **Exhibit A**.

8. Neither Liberty nor the Executive Committee objects to entry of an order dismissing Count II of Mr. Falwell's Complaint pursuant to Rule 41.

Dated: February 8, 2024

Respectfully submitted,

JERRY L. FALWELL, JR.

/s/ Vernon E. Inge, Jr.

Counsel

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Counsel for Plaintiff, Jerry L. Falwell, Jr.

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of February, 2024, I electronically filed the foregoing ***Jerry L. Falwell, Jr.'s Agreed Motion to Voluntarily Dismiss Count II of His Complaint Pursuant to Federal Rule of Civil Procedure 41(a)(2)*** with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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/s/ Vernon E. Inge, Jr.

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